IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13927 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASUL IBRAHIM JADA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13927 of 2004

MR MA KHARADI for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-2

MR SUNIL S JOSHI for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/01/2005

ORAL JUDGEMENT

#. With the consent of the learned advocates for the

respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 / 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State Government dated 30.06.2004 / 24.09.2004 in Revision Application no. 6 of 2002 in dismissing the same and confirming the order passed by the Dy.Collector, Dahod dated 17.09.1986.

#. It is the case of the petitioner that the petitioner has purchased the land in question from respondent nos. 3 to 5 on 13.06.1977 by agreement to sale and thereafter on 20.6.1977 by registered sale deed. It is also case of the petitioner that since then the petitioner is in possession of the land in question and so far as the provisions of Section 73 AA of the Bombay Land Revenue Code ("the Code" for short) are concerned, the same are made applicable so far as Dahod Taluka is concerned with effect from 01.02.1981. In the proceedings under Section 73AA of the code, the Dy.Collector, Dahod by its order dated 17.09.1986 held that so far as the provisions of Section 73A are concerned, the same are not made applicable with regard to the Dahod taluka and so far as Section 73-AA is concerned, the same is made applicable after the transaction in question and, therefore, there is no breach of provisions of Section 73A or Section 73AA of the Code and therefore, decided to enter the name of the petitioner in the record of right. Being aggrieved and dissatisfied with the order passed by the Dy.Collector LND-8 Dahod dated 17.09.1986, respondent nos. 3 to 5 preferred the revision application before the Secretary (Appeals), Revenue Department, State of Gujarat, being Revision Application No. 6 of 2002. It is the case of the petitioner that the said revision application was filed after a period of 16 years and therefore, notice was issued by the Secretary (Appeals) to show cause as to why the delay should not be condoned and the revision application should not be admitted. It is the case of the petitioner that instead of passing any order with regard to the admission of the revision application and/or condonation of delay of 16 years, the revision application came to be partly allowed by the Secretary (Appeals) and the matter is remanded to the Dy.Collector LND-8 to decide the question with regard to Sections 73A and 73AA afresh by cancelling the order passed by the Dy.Collector LND-8 dated 17.09.1986. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals) dated 30.6.2004 / 24.9.2004 in Revision Application No. 6 of 2002, the

petitioner has preferred the present petition under Article 226 / 227 of the Constitution of India.

#. Mr.Kharadi, learned advocate appearing for the petitioner, has vehemently submitted that the Secretary (Appeals) ought not to have entertained the revision application which was filed after a period of 16 years on passing the order by the Dy.Collector which came to be passed on 17.09.1986 without condoning the delay and more particularly, in view of the fact that the petitioner was called upon to make submissions only for the purpose of condonation of delay as to why the revision application should not be admitted. He further submitted that in fact number of submissions on merits were raised by the petitioner but the same have not been dealt with by the Secretary in his judgment and order. It is further submitted that in fact the submission was made with regard to applicability of Section 73AA of the Code after the transaction in question which has not been properly considered by the Secretary (Appeals) and therefore, there is no specific finding by the Secretary (Appeals) in his order.

#. Mr.Sunil Joshi, learned advocate appearing for the respondent nos. 3 to 5, has tendered affidavit-in-reply opposing the petition. It is submitted that there are two suits already filed being Regular Civil suit nos. 56 of 2002 and 58 of 2002 before the learned Civil Judge (J.D.), Dahod for the purpose of redemption of mortgage with regard to the land in question. It is further submitted that as the transaction itself is contrary to the provisions of Sections 73AA and 73A of the Code, the Secretary (Appeals) is justified in remanding the matter to the Dy.Collector for deciding the same afresh.

#. Mr.Sood, learned A.G.P. has tried to support the order passed by the Secretary (Appeals).

#. Heard the learned counsel for the parties.

#. It is an admitted position that the revision application came to be filed by the petitioner after a period of 16 years. The revisional authority could have entertained the same either by condoning the delay and / or after admission of the revision application. It appears from the record that in the order passed by the Secretary (Appeals) dated 30.06.2004 in Revision Application no. 6 of 2002, there is no specific finding and/or the order passed by the Secretary (Appeals) with regard to entertaining revision application / admitting the revision application, there is no specific finding

with regard to applicability of Section 73A or Section 73 AA of the Code. There being a specific finding given by the Dy.Collector LND-8, Dahod in his order dated 17.9.1986 to the effect that the transaction in question is prior to applicability of Section 73AA of the Code and that the provisions of Section 73A are not made applicable with regard to Dahod, it was incumbent on the part of the Secretary to give finding at least contrary to the same so that the matter may be remanded. There is no such finding given by the Secretary (Appeals) and it appears that in mechanical manner, the order is set aside and the matter is remanded to the Dy.Collector, Dahod. Considering the aforesaid facts and circumstances, the impugned order passed by the Secretary (Appeals) dated 30.6.2004 / 24.9.2004 in revision application no. 6 of 2002 is hereby quashed and set aside and the matter is remanded to the Secretary (Appeals) to pass afresh order in accordance with law and on merits and to pass a speaking order dealing with all the contentions raised by the petitioner as well as respondent nos. 3 to 5. Considering the facts and circumstances of the case, the Secretary (Appeals), Revenue Department, State of Gujarat is directed to decide and dispose of the same within a period of six months from the date of the receipt of the writ of this order. Until then, parties are directed to maintain status quo.

##. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)